

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

565I0597

SENATE BILL NO. 177

Introduced by: Senators de Hueck and Knudson and Representatives Garnos, Cradduck, and
Van Gerpen

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to contested cases under
2 the Administrative Procedures Act and the Office of Hearing Examiners.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 1-26-18.3 be amended to read as follows:

5 1-26-18.3. In a any contested case, ~~if the amount in controversy exceeds two thousand five~~
6 ~~hundred dollars or if a property right may be terminated~~, any party to the contested case may
7 require the agency to use the Office of Hearing Examiners by giving notice of the request no later
8 than ten days prior to the hearing. ~~Except as otherwise provided for cases arising under Title 61,~~
9 ~~if such requesting party does not prevail, the Office of Hearing Examiners shall require the~~
10 ~~requesting party to pay the cost of the services rendered in hearing the contested case.~~

11 Section 2. That § 1-26-33 be amended to read as follows:

12 1-26-33. Within thirty days after the service of the notice of appeal, or within further time
13 allowed by the court, the agency shall transmit to the reviewing court the original or a certified
14 copy of the entire record of the proceeding under review. By stipulation of all parties to the
15 review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to



1 limit the record may be taxed by the court for the additional costs. The court may require or
2 permit subsequent corrections or additions to the record.

3 ~~It shall be the duty of the~~ The agency to or the Office of Hearing Examiners, if the contested
4 case was heard by the Office of Hearing Examiners, shall assemble and consecutively number the
5 pages of all documents, papers, and exhibits filed with the agency or office, including any
6 opinions and decisions which the agency or office may have filed or authorized for filing. The
7 agency or office shall then prepare and attach an alphabetical and chronological index to the
8 record and shall serve a copy of such index on all parties to the review proceedings at the time
9 the record is submitted to the reviewing court.

10 Section 3. That § 1-26D-8 be amended to read as follows:

11 1-26D-8. The reviewing agency shall personally consider the whole record or, alternatively,
12 such portions of it as may be mutually cited by the parties. If the reviewing agency rejects or
13 modifies proposed findings or a proposed decision, ~~it~~ the reviewing agency shall give reasons for
14 doing so in writing. In reviewing proposed findings of fact entered by the presiding hearing
15 examiner, the reviewing agency shall give due regard to the hearing examiner's opportunity to
16 observe the witnesses.

17 Section 4. That § 1-26D-10 be amended to read as follows:

18 1-26D-10. Within ten days after written notification to the parties of the appointment of a
19 hearing examiner in any contested case, any party to that contested case may file an affidavit
20 requesting the appointment of another hearing examiner. The chief hearing examiner shall then
21 appoint another hearing examiner to hear that contested case. Each party may file only one such
22 affidavit in any contested case.